



GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

Eminent Domain Law:

A Primer Prepared for the Utah Legislature's
Political Subdivisions Interim Committee

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“ . . . nor shall private property be taken for public use, without just compensation.”

U.S. CONSTITUTION, BILL OF RIGHTS, AMENDMENT V

“Private property shall not be taken or damaged for public use without just compensation.”

CONSTITUTION OF THE STATE OF UTAH, ARTICLE I, SECT. 22

Rights Currently Provided to Property Owners

- a. **Just Compensation:** Property owners have a constitutional right to receive just compensation if their land must be taken from them for a public purpose. “Just compensation” means:
 - i. Fair market value for the portion of the land taken.
 - ii. Severance damages, if any, reflecting any loss in value of portions not taken.
 - iii. Compensation for any other damages done to property.
- b. **Public Purpose:** Property owners have a right to not have their property taken unless it is being taken for a public purpose, and is necessary to accomplish that purpose, and is being done in a way that accomplishes the greatest public good with the least private injury.
- c. **A Hearing:** Property owners have a right to appear and speak at a meeting of a government entity considering an eminent domain action.
- d. **Negotiation:** Property owners have the right to enter into negotiations with the condemning entity prior to condemnation. They also have the right to know the basis of the condemning entity’s offer, including receiving a copy of any appraisals done on the property.
- e. **Help from Ombudsman:** Property owners have the right to seek assistance from the Office of the Property Rights Ombudsman. The assistance that the Ombudsman provides includes:
 - i. Education and instruction regarding the condemnation process, and an explanation of the options available.
 - ii. Assistance in negotiating with the condemning entity.
 - iii. A free additional appraisal of the property, prepared by a licensed appraiser.
 - iv. Mandatory mediation with the condemning entity with an experienced eminent domain mediator.
 - v. Mandatory non-binding arbitration with the condemning entity.
- f. **A Jury Trial:** Property owners have full legal rights of due process and to have the eminent domain dispute heard by a jury of their peers.

The Basic Eminent Domain Process (when done correctly):

1. A condemnor determines that eminent domain is necessary in order to fulfill a public purpose. *UTAH CODE § 78B-6-501.*
2. The condemnor notifies the potential condemnee at least 10 businessdays prior to the public meeting of the governing body where eminent domain may be approved. The condemnee may speak at the meeting. *UTAH CODE § 78B-6-504.*
3. The condemnor obtains a valuation for the acquired property, usually with an appraisal.
4. The condemnor makes a reasonable effort to negotiate with the property owner for the purchase of the property prior to condemnation. *UTAH CODE § 78B-6-505.* This usually involves making an offer of just compensation to the property owner. *UTAH CODE § 57-12-13.*
5. The condemnor notifies the property owner of their right to contact and request the services of the Office of the Property rights Ombudsman, and provides the materials produced by the Ombudsman
 - a. As soon in the negotiation process as practicable,
 - b. No later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action. *UTAH CODE § 78B-6-505.*
6. If the property owner requests it, the Ombudsman orders an additional, independent appraisal of the acquired property. The condemnor pays for that appraisal. *UTAH CODE § 78B-6-522.*
7. If the property owner requests it, the condemnor participates in mediation or arbitration provided by the Ombudsman. *UTAH CODE § 13-43-204.*
8. If necessary, the condemnor obtains immediate occupancy of the land in order to commence timely construction of the project. Issues related to the acquisition, including the amount of compensation owed, are preserved and the negotiation process continues.
9. If legal action is necessary, the condemnor provides full due process to the property owner. Nevertheless, negotiations and the involvement of the Ombudsman continue as the parties work toward settlement.

Eminent Domain Glossary

Appraisal – A valuation report of property prepared by a licensed appraiser. Other kinds of compensation estimates are not appraisals.

Arbitration – A dispute resolution procedure where evidence is submitted to an independent arbitrator who issues an award. This differs from mediation in that an arbitrator, and not the parties, makes the final decision.

Condemnation – The acquisition of property for a public purpose after payment of just compensation. Also called eminent domain.

Easement – An ownership interest in land less than full fee ownership, permitting certain uses of land in accordance with the terms of the easement.

Eminent Domain – The acquisition of property for a public purpose after payment of just compensation. Also called condemnation.

Fair Market Value – The price that would be paid on the open market with a willing and informed buyer and seller.

Fee Acquisition – Acquiring full ownership in property or a portion of property.

Immediate Occupancy – The legal right to enter upon and occupy the land, but preserving other issues such as the amount of compensation owed, for later adjudication.

Inverse Condemnation – Taking private property for public use without paying for it or going through the proper condemnation process. Also called “a taking.”

Just Compensation – The amount that must be paid in eminent domain. This includes fair market value and severance and other damages.

Mediation – A dispute resolution process where the parties meet, under the guidance of a mediator, and attempt to reach a mutually beneficial settlement.

Public Use – A land use for the benefit of the public for which eminent domain is available. Many, but not all, are found in *UTAH CODE § 78B-6-501.*

Relocation – A process under the Utah State Relocation Act, Title 57, Chapter 12 of the Utah Code, governing eligibility for and compensation for parties whose homes or businesses must be relocated as part of eminent domain.

Severance Damages – Damages caused after condemnation of a portion of a parcel of land, where the condemnation project has caused the remainder of the land to diminish in value.

Temporary Construction Easement – A temporary easement permitting access and occupancy of property, usually while construction of the project is ongoing.